

The Berryville Town Council held their regular meeting on November 14, 2006 in the Town Council Chambers at 15 E. Main Street, Berryville, Virginia.

The following were present:

Council -	Richard G. Sponseller, Mayor Harry Lee Arnold, Jr., Recorder Wilson Kirby Lawrence Russell, III Barry Nicholson Allen Kitselman
Staff -	Keith R. Dalton, Town Manager Christy Dunkle, Asst. Town Mgr/Town Planner Chief Neal White, Police Department Rick Boor, Public Works Director Celeste Heath, Town Clerk
Press -	Winchester Star: Bob Igoe, Clarke Times Courier: Rebecca Maynard

Mayor Sponseller called the TOWN COUNCIL MEETING to order at 7:30 p.m. on November 14, 2006 in the Town Council Chambers at 15 E. Main Street, Berryville, Virginia.

On motion by Council member Arnold, seconded by Council member Russell and passed, the minutes of the Council meeting of September 27, 2006 were approved as written.

Recorded Vote:

Aye –	Richard G. Sponseller, Mayor Harry Lee Arnold, Jr., Recorder Lawrence Russell, III Barry Nicholson Allen Kitselman
Nay –	None
Abstain –	Wilson Kirby
Absent –	None

On motion by Council member Arnold, seconded by Council member Russell and passed, the minutes of the Council meeting of October 10, 2006 were approved as written.

Recorded Vote:

Aye –	Richard G. Sponseller, Mayor Harry Lee Arnold, Jr., Recorder Lawrence Russell, III Barry Nicholson
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Allen Kitselman
Wilson Kirby

Nay – None

Abstain – None

Absent – None

On motion by Council member Arnold, seconded by Council member Russell and passed, the minutes of the Council meeting of October 25, 2006 were approved as written.

Recorded Vote:

Aye – Richard G. Sponseller, Mayor
Harry Lee Arnold, Jr., Recorder
Lawrence Russell, III
Barry Nicholson
Allen Kitselman
Wilson Kirby

Nay – None

Abstain – Barry Nicholson

Absent – None

Citizen's Forum

Robert Sherwood, 10 Farmer's Lane, Vice-President of Berryville Main Street announced several holiday events sponsored by BMS and announced three new members to the BMS board: Paul Jones, Maral Kalbian and Jason Williams. He reported that BMS is creating a brochure for potential Berryville businesses.

Mr. Sherwood said that Ms. Kalbian has written an architectural statement regarding downtown that will be used to pursue a grant for an architectural assessment. He noted that Ms. Kalbian is also helping town staff look at the town's tree ordinance.

Mary Nagelvoort, 3043 Parshall Road thanked the Town Council on behalf of the Farmer's Market and said it had a very successful season and that Keith Dalton and Christy Dunkle were very helpful to the market.

Diana Kincannon, of the Barns of Rose Hill handed out a report on the Barns activities and thanked the Town Council for their support of the barns transportation enhancement grant application.

Mark Clarke, President of the Milton Valley Cemetery said that he will speak on Annexation Area B-8 during the Planner's Report.

Report of the Mayor, Richard G. Sponseller

The Mayor reported that the County has an opportunity to purchase 203 Josephine Street and that in order for them to purchase property in town the council must adopt a resolution of support.

Planning and Zoning Matters

Comment Period on Annexation Area B-8

Ms. Dunkle said that the Planning Commission has recommended annexation of Area B-8 as of January 1, 2007. Ms. Dunkle then explained where area B-8 is located. She said that adjacent property owners were notified of the proposed annexation and public hearings on 9/26/06. Mayor Sponseller then called for public comment.

Paul Jones, 898 Westwood Road said that he is a member of the Milton Valley Cemetery Association and is concerned that there is some connection between the annexation and the purchase of 203 Josephine Street. He said that there are questions about safety, noise and traffic on Josephine Street if the property is purchased by the county.

Mr. Dalton said that the two matters are unrelated. He said that he was told that the county was recently asked if it wanted to purchase the 203 Josephine Street property by the property owner.

Mr. Jones asked about the advantages and disadvantages of annexation of the cemetery.

Mayor Sponseller said that there are no disadvantages. He noted that Green Hill Cemetery has some problem with theft and vandalism and that the town police would patrol the Green Hill and Milton Valley Cemeteries if they are annexed.

Mr. Jones asked if there would be trash service to the property if it is annexed. He said that the cemetery does have leaves and brush that have to be removed. Mr. Dalton said that the town does offer weekly brush and leaf collection if the items are in paper yard waste bags.

Mr. Dalton explained that the annexation of Milton Valley Cemetery was brought about because the business park behind it is essentially complete and is being annexed. This would leave Milton Valley as a "donut hole" amongst land that will be within the Town of Berryville.

Marcella Roberts, 318 Josephine Street asked why the cemetery wasn't annexed when Josephine Street was annexed in 1989. Mr. Dalton said that only occupied property was annexed in 1989 and the business park behind Milton Valley had not been developed yet.

Ms. Roberts asked what is the town's purpose for Milton Valley Cemetery. Mayor Sponseller said that the town can have no effect on the cemetery, that state law protects cemeteries. He also noted that the land cannot be taxed.

Ms. Roberts asked what the address of the Milton Valley Cemetery is. Mr. Dalton said that he doesn't know that it has been given an address but that certainly could happen.

Mr. Dalton then noted that the town is annexing other "islands" in town including Green Hill Cemetery and a portion of Route 340 and other frontage roads. The Town Council then discussed the remainder of the annexation area.

Roland Clarke said that he was at the Board of Supervisors meeting about the purchase of 203 Josephine Street and that the majority of residents decided they didn't want that type of development on that particular property.

Chuck Johnston, Planner for the County of Clarke said that the county would like to purchase 203 Josephine Street because the county owns property with 37 feet of frontage on Josephine Street and this would allow for more access to that property. He said that using the county's land to develop affordable housing has been discussed. He said that there is a great deal of concern about traffic because Josephine Street is a dead end street.

Mr. Johnson said that the Board of Supervisors heard the concerns of the citizens of Josephine Street and that the property is considered somewhat sacred by the black community. He said that no matter what the property is used for, even if it is a park, it will need access frontage. He noted that this process was initiated by the current owner of 203 Josephine Street.

Council member Kitselman noted that when and if the county developed the land there would be public hearings in which residents could state their opinions and comment on plans.

Mark Clarke asked what is meant by affordable housing. Mr. Johnston said that those questions have not been addressed but the property owner at 203 Josephine Street wants to sell the property now.

Mayor Sponseller said that the Town Council has been wrestling with the affordable housing issue for some time. He said that the economic climate here makes it hard to find affordable housing. He said that this is one of the last pieces of land where affordable housing could be developed because developers own much of the undeveloped land around town. He said that he remembers that one of the issues that the Berryville Citizens Association was the lack of affordable housing in Berryville.

Roland Clarke said that he is concerned about the type of affordable housing and that he thinks Habitat for Humanity houses would create more problems. He stated that this is the wrong place for affordable housing.

Council member Kitselman asked why he thinks that about Habitat for Humanity. Mr. Clarke said that residents don't take care of that type of housing. Council member Kitselman disagreed noting that there are covenants that go along with those houses and that such organizations do a good job.

Council member Nicholson asked what density would be allowed on the county property. Mr. Johnston said that it depends on the style of housing, but it would be roughly 40 multi-family units or 16 single family units.

Council member Nicholson said that the town's sewer capacity is very tight and that the county should keep that in mind when making any plans. Mayor Sponseller said that he thinks 40 units would be hard to accept as far as sewer capacity is concerned. Mr. Kitselman said that he thinks traffic would also be a problem at that density.

Mr. Johnston said that this discussion is all hypothetical and that what is before the board is the purchase of the 203 Josephine property to provide access.

Paul Jones said that he does not see that citizens of Josephine Street are opposed to development on the property. They are just concerned that traffic and noise problems are controlled. He said that people worked hard to get senior housing built and now Clarke County residents can't get in. He asked if there was a way to make sure anything built on the property would be reserved for Clarke County residents.

Mr. Dalton said that organizations such as Habitat for Humanity find individuals in the community to build house for, and uses community resources and contractors to build the house.

Sheila Page, 118 Josephine Street said that she is concerned that that there is not enough space to put in a roadway to the county's property, but that once the county gets the 203 Josephine property it will do what it wants. She said that there is not enough right of way on Josephine Street to put a road to the county's property because of the location of the railroad track.

Mr. Johnston said that he can only report what VDOT told him – that the property would allow at a minimum a commercial entrance and that there is enough room for a road, even with the railroad track.

Mayor Sponseller said that he would like to see the council defer this decision until the Board of Supervisors decides what direction they want to take.

Council member Nicholson asked who is responsible for reviewing the application if the Board of Supervisors proceeds on the project. He said that he believes that the town should have the right to review any such project and asked if the Board of Supervisors would give their review rights to the town if they are indeed the reviewing body.

Mr. Dalton said that the Town Council would review such a request upon recommendation of the Berryville Area Development Authority. Mr. Johnson said that as he recalls, the Board of Supervisors would review such requests. Mr. Dalton said that he will consult with the Town's attorney to clarify the matter.

There was a general discussion of the board's timetable for purchasing the property.

Council member Nicholson said that he would be more likely to approve the sale if he knew the town would review any future development on the county's parcel. Council member Kirby said that there are unanswered questions about access and review that might be answered during a study period.

Ms. Marcella Roberts said that the town can't even pave Josephine Street like the other street in town.

Mr. Dalton said that VDOT paves the street in town and that Josephine Street received a slurry coat, just like the vast majority of streets in town.

There was a general discussion of possible access points to the county's property.

Council member Kirby said that he is in favor of deferring a decision on this issue. Council member Kitselman said he would like to defer a decision as well but would like to facilitate this because affordable housing is a good cause.

Mr. Dalton said it seems like the council would like to know who would review a project on the site and would like to see VDOT's comments regarding the entrance.

Mayor Sponseller said that the council would be willing to hold a called meeting later in the month if necessary but that it seems that if the council would like to have time for further study of the issue.

Mark Clarke asked about the advantages of annexation. Mr. Dalton said that town residents get police protection, street lights, trash and brush collection. Mr. Clarke asked if the town could take over the cemetery later. Mayor Sponseller said that the cemetery is protected by state law and that the town has an interest in protecting the cemetery.

Water and Sewer Billing

Mr. Dalton said that he had anticipated that citizens would be present to talk about water and sewer billing. Jason Sides from HD Supply was present to answer any questions about meter reading. There were no questions from the citizens present.

Planner's Monthly Report

Annexation Area B-8

Mayor Sponseller asked for additional public comment.

Mark Clarke asked to read a letter for the record (attached.)

Ms. Dunkle said that public notice on the matter was sent to Paul Jones because he is listed as the trustee of Milton Valley Cemetery. She said that a public hearing notice also ran in the Clarke Times Courier.

Mark Clarke said that Milton Valley Cemetery wasn't specifically listed in the ad. Ms. Dunkle said that a map of the entire area was in the ad and that a letter was sent to property owners on the south side of Josephine Street.

Paul Jones said that regarding an incident with the other cemetery in town, there are only two tombstones left and when he was a child there were 50 or 60 tombstones there. He said that he is not blaming anyone but the cemetery did exist. He said that as Mark Clarke said "we don't forget and don't want this to happen again". He said that he wants Milton Valley Cemetery to stay intact.

Mayor Sponseller said that the Town Council wants the cemetery to be protected. Council member Kitselman said that the Town Council is an ally in protecting the cemetery.

**Berryville Town Council
November 14, 2006**

Councilmen:

My name is Mark Clarke. I am president of Milton Valley Cemetery Association.

On October 11, I read in the local newspaper that 146 acres of land was approved for annexation to the town by the Berryville Planning Commission. Included in the 146 acres was Milton Valley Cemetery.

No member of the Milton Valley Cemetery Association received any communication from the Planning Commission prior to this arbitrary action. Nor was Milton Valley Cemetery included in the public announcement published in the Clarke-Times Courier several weeks before the Planning Commission meeting. Had we been properly notified, we would have attended the meeting to express our opposition to such an action.

The Milton Valley Cemetery Association opposes this annexation for historical reasons. We are aware of a second African- American cemetery in Berryville which no longer exists because of several questionable actions. We wish to preserve our cemetery for posterity without the fear that new developments, businesses, and future proposals by the Berryville Planning Commission will displace the cemetery.

Tonight, I'm requesting that you vote against the annexation of Milton valley cemetery.

**Mark Clarke, President
Milton Valley Cemetery Association**

It was moved by Council member Kirby, seconded by Council member Nicholson that the Council of the Town of Berryville approve Annexation B-8, the application of Town Zoning, and ward boundaries as attached, to become effective January 1, 2007.

Recorded Vote: Aye – Richard G. Sponseller, Mayor
 Harry Lee Arnold, Jr., Recorder
 Wilson Kirby
 Allen Kitselman
 Barry Nicholson
 Lawrence Russell, III

Nay – None

Absent – None

Set Public Hearings – Special Use Permit

Set Public Hearings – Special Use Permit – Operate a Private School - Impervious Parking Within Designated Flood Plain Area

Stephen and Margaret Querolo, Owners, are requesting a Special Use Permit under Section 607.3(s) of the Berryville Zoning Ordinance in order to operate a private school at 629 East Main Street, identified as Tax Map Parcel number 14A-6-((4))-9 zoned C-1 Commercial and a Special Use Permit under Section 206.13(f) of the Berryville Zoning Ordinance in order to construct an impervious parking area within the designated flood plain area located at that property.

Ms. Dunkle said the site plan for this project was approved at the October 10 Planning Commission meeting. She said that the Planning Commission recommended that the council set public hearings regarding the special use permits.

Public hearings regarding the two special use permit applications were set for December 12, 2006.

Blight Abatement

Mr. Dalton distributed a letter from the town's attorney that addresses Mr. Robert Sherwood's earlier comments. Council member Nicholson said that the memo addressed most of his questions as well.

A public hearing regarding a blight abatement ordinance was set for December 12, 2006.

Bond – Section 4-B Battlefield Estates

Mr. Dalton said that he has been asked to sign off on the deed of dedication for Section 4B of Battlefield Estates. The town's engineer has recommended the following bond amounts: Erosion and Sediment Control bond for \$75,956.72 and the Public Improvement bond for \$1,155,407.77.

It was moved by Council member Kirby, seconded by Council member Kitselman that the Council of the Town of Berryville approve the request by Ketocin Land Company to

set the Erosion and Sediment Control bond for Section 4B for \$75,956.72 and the Public Improvement bond for Section 4B for \$1,155,407.77.

Recorded Vote: Aye – Richard G. Sponseller, Mayor
 Harry Lee Arnold, Jr., Recorder
 Wilson Kirby
 Allen Kitselman
 Barry Nicholson
 Lawrence Russell, III

Nay – None

Absent – None

Shenandoah Gas Easement Requests

Council member Nicholson said that he was concerned that work on our lines might disturb Shenandoah Gas' lines. Mr. Tyrell said that we wouldn't have to drive across the gas easement to repair our lines. There was a discussion of what would happen if the town's water lines had to be re-built near the easement. Mr. Dalton said that the town may want to get a decent separation between the gas line and the water line. Mr. Dalton said he would be willing to clarify that issue with Shenandoah Gas.

Report of the Town Manager – Keith Dalton

Sale of Interest in Real Property

Mr. Dalton presented a draft deed and agreement with the County of Clarke regarding the sale of a portion of the property that the joint administrative building will be built on in order to facilitate the joint ownership of the land. He said that the agreement sets specific time limits on notices to proceed and allows the town to demand sale of 50% of the property if the county fails to proceed as agreed.

A public hearing on the sale of property was set for December 12, 2006 at 7:30 p.m.

Through Truck Restriction

Mr. Dalton reminded the council that a joint public hearing with the Board of Supervisors had previously been set for 6:30 p.m. on December 12, 2006.

Handicapped Parking Space Requests

Mr. Dalton said that he gets quite a few requests for handicapped parking spaces in the Battletown Townhouse development. He said that he has granted spaces when a resident provides handicapped tags. He said this seems to be encouraging more requests and has lead to complaints from neighbors who lose access to scarce parking spaces.

He suggested that Town Council to consider a more formal process in which the applicant applies to Town Council and neighbors are allowed to comment. He also recommended an annual review of the spaces so that a space doesn't remain after the person that requested it moves out.

Mayor Sponseller said that he thinks it is a good idea to get public comment and issue annual permits. Mr. Dalton said he would bring back a draft policy in January.

Holiday Schedule

Mr. Dalton said that Governor Kaine has declared the following holidays:

Thanksgiving:

Wednesday, November 22, close at noon; Thursday, November 23 and Friday, November 24. He said that Thursday and Friday are provided for in the Employee Handbook.

Christmas:

Friday, December 22, close at noon; Monday, December 25 and Tuesday, December 26. He said that Monday is provided for in the Employee Handbook.

New Years:

Monday, January 1 and Tuesday, January 2. He said Monday is provided for in the Employee Handbook.

Mr. Dalton recommended approving all of the above holidays except January 2nd. By consensus, the council approve all of the above holidays, except January 2nd.

Reports of Standing Committees

- a. BADA Liaison
No report.
- b. Budget/Finance/CIP – Richard G. Sponseller, Chair
No report.
- c. Community Improvements – Allen Kitselman, Chair
There will be a meeting in January.
- d. Personnel/Appointments - Richard Sponseller, Chair
- e. Police and Security Committee – Barry Nicholson, Chair

Police Department – Monthly Report – Chief Neal White

Chief White said that he has been attempting to resolve a problem with the accumulation of trash at 210 North Buckmarsh Street. He said that he has had quite a bit of correspondence with the property owner but the property has not been cleaned up. He said that in order to enforce the Town Code on the matter, Town Council must set a date for trash removal.

It was moved by Council member Nicholson, seconded by Council member Kirby to set a date for removal of trash from 210 North Buckmarsh Street for November 28, 2006.

Recorded Vote: Aye – Richard G. Sponseller, Mayor
 Harry Lee Arnold, Jr., Recorder
 Wilson Kirby
 Allen Kitselman
 Barry Nicholson

Lawrence Russell, III

Nay – None

Absent – None

General Order #22 – Missing Persons

It was moved by Council member Nicholson, seconded by Council member Kitselman to approve General Order #22 as submitted. (on file at Police Department for security reasons.)

Recorded Vote: Aye – Richard G. Sponseller, Mayor
 Harry Lee Arnold, Jr., Recorder
 Wilson Kirby
 Allen Kitselman
 Barry Nicholson
 Lawrence Russell, III

Nay – None

Absent – None

Open Burning

Mr. Dalton said that the choice in this matter is either adopt the state ordinance or create an ordinance and send it to the state for approval.

Council Member Russell said that the council must hold a public hearing on the matter. Mayor Sponseller said that he agrees with Mr. Jenkins comments that the setbacks in the state ordinance basically prohibit burning in town.

Council member Nicholson said that he thinks a town ordinance should be developed.

A public hearing was set on an open burning ordinance for the January 9, 2007 Council meeting.

- f. Streets and Utilities - Wilson Kirby, Chairman
No report.

Proposed Water and Sewer Service Area Agreement

Mr. Dalton presented a draft response letter to the Clarke County Board of Supervisors' proposed Clarke County Master Plan to Transfer Water and Sewer to the Town of Berryville and a draft agreement.

It was moved by Council member Kitselman, seconded by Recorder Arnold to authorize the Mayor to sign the letter as presented regarding the service area agreement (attached).

Recorded Vote: Aye – Richard G. Sponseller, Mayor
 Harry Lee Arnold, Jr., Recorder

Wilson Kirby
Allen Kitselman
Barry Nicholson
Lawrence Russell, III

Nay – None

Absent – None

There being no further business, on motion by Councilman Russell, seconded by Councilman Kitselman and passed by voice vote, the Council meeting was adjourned at 9:35 p.m.

Richard G. Sponseller, Mayor

Harry Lee Arnold, Jr., Recorder

16 November 2006

John Staelin, Chairman
Clarke County Board of Supervisors
102 North Church Street
Berryville, VA 22611

Dear John:

We have reviewed the draft Berryville Area Exclusive Service Area Agreement and the View Master Plan.

There are several items in View's report that need to be either clarified or corrected but we will not get in to that level of detail in this response. We will have Keith Dalton contact David Ash on those sorts of issues. We will focus our comments on "big picture" issues that will dictate that which will need to be included in the agreement.

We do not agree with View's contention that several system components are eligible for transfer at a given point in time because they would essentially be islands that do not connect to our collection / distribution systems. Such an arrangement would not work. Any system sections to be accepted would have to be conterminous with the town's collection / distribution systems.

We remain convinced that the Town and County need to take the following approach. As an initial step the County would:

- Install a sewer flow measuring device somewhere near Manhole 18.
- Install a water meter in one of two places, either 1) on the 8" line somewhere on the Berryville Public Work Site* or 2) on the 3" line near the intersection of West Main Street and Westwood Road**

* site and installation methods to be approved by the Town's engineer and Director of Public Works

** presupposes the acceptance of the 8" water line from the Public Works Site to the High School and certain improvements at the High School

Staelin
16 November 2006
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The Town will agree to read the water meters in the county distribution system and provide billing services. The Town will bill the County for any water and wastewater flow not accounted for by individual bills (as determined by readings taken from the master meters). Any water bill accounts in the service area that are not paid and later deemed uncollectible will be billed to the County.

After these metering devices are installed the County may move it its own pace to get the system up to Town standards. It is essential that all new construction meet Town standards and that some sort of upgrade program be put in place. Improvements must be inspected by a town approved inspector.

This strategy has been suggested in the past and we remain confident that it is the right course of action.

With specific regard to the language of the draft agreement, it should be made clear that isolated parts of the distribution and collections systems will not be accepted. Further, it must be noted that the county will be responsible for relocation certain metering devices when portions of these systems are accepted by the Town for maintenance.

Thank you for your considerable work on this matter. We look forward to completing this agreement in the very near future.

Sincerely,

Richard G. Sponseller
Mayor

Cc: Town Council
Keith Dalton, Town Manager
Christy Dunkle, Assistant Town Manager
Rick Boor, Director of Public Works
David Tyrrell, Director of Public Utilities